

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.207 OF 2007

Shri Babu Timma Gollar ..Applicant.

V/s.

Shri Vijay Kumar Ubale & Anr. ..Respondents.

Mr.C.K.Pendse for applicant.

Mr.Y.S. Shinde, A.P.P. for respondents.

CORAM : J.H.BHATIA, J.

DATED : 15TH MARCH, 2007.

P.C. :-

. Heard Mr.Pendse, learned counsel for the applicant. This is an application seeking special leave to prefer an appeal against the order of acquittal in the complaint lodged by the present applicant for offence under section 138 of the Negotiable Instruments Act. Learned Trial Court came to the conclusion that the cheque was issued by the respondent and it was dishonoured. However, the trial Court found that when the notice was issued and when complaint was filed, the respondent was in custody in some other matter and, therefore, he was not served with the notice and in the result, offence is not committed.

2. The record reveals that the respondent No.1 was in jail from 5/5/2003 to 8/9/2003. Notice was issued on 7/6/2003, which was returned by the postal authorities on 26/6/2003 with endorsement "unclaimed intimation posted". As the payment was not made within the stipulated period, the applicant filed the complaint on 15/7/2006. From this it is clear that the respondent was in jail even prior to the issuance of notice. He continued to be in jail for a period about 2 months even after filing of the complaint. In such circumstances, the notice was not served on him. Merely because the postman had taken notice to his house and had given intimation to the members of his family, it cannot be presumed that the respondent had in fact received the notice and that he had failed to comply with the same. The learned counsel for the applicant tried to place reliance upon para 8 of the Judgment in the case of **Puwada Venkateswara Rao V/s. Chidamana Venktara Ramana** reported in **1976 Supreme Court, 869**. That authority is under Rent Control Act. In view of the facts of the present case, that authority does not help the present applicant. I find no fault with the impugned Judgment.

3. In the result, application is rejected. Leave refused.

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(J..H.BHATIA, J.)